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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MAXCUIM NATHANIEL HERRING,
JR.,

Defendant and Appellant.

G040093

(Super. Ct. No. 06WF3260)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed.

David McNeil Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Raquel M. Gonzalez, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Maxcuim Nathaniel Herring of multiple counts of robbery (Pen. Code, §§ 211, 212.5, subd. (c));¹ multiple counts of false imprisonment by violence (§§ 236, 237, subd. (a)); and one count of aggravated assault (§ 245, subd. (a)(1)). The jury found defendant not guilty of four counts of street terrorism (§ 186.22, subd. (a)) and a mistrial was declared as to two counts for which the jury could not reach a unanimous verdict. The jury found certain gun use enhancement allegations to be true (§ 12022.53, subd. (b)), but found criminal street gang enhancement allegations to be not true (§ 186.22, subd. (b)(1)). The court sentenced defendant to an aggregate term of 33 years, 4 months in prison.

Defendant claims the court erred in refusing to investigate alleged juror misconduct, or, alternatively, provide juror identifying information to defendant to assist in his preparation of a motion for new trial based on alleged juror misconduct. We affirm the judgment.

FACTS

We need not belabor defendant's criminal conduct, as the legal issues raised by defendant do not pertain to the evidence or the substantive offenses of which he was convicted. Needless to say, evidence was introduced suggesting defendant robbed and falsely imprisoned employees of several commercial establishments in May 2006, August 2006, and September 2006.

On the first day of jury deliberations conducted over five days, the jury foreperson sent a note to the court stating, "One juror feels another will not give the defense fair consideration despite having been sworn to do so. [¶] Need answer ASAP." The court offered counsel the opportunity to be heard. The court rejected defense

¹ All statutory references are to the Penal Code, unless otherwise referenced.

counsel's request to remind the jury of the burden of proof. The court indicated its intention to instruct the jury and counsel offered no further objections to this course of action.

The court brought the jury into the courtroom and instructed them as follows: "Two preliminary short comments. A judge must do nothing to interfere with the deliberation of a jury. That's number one. [¶] Number two, there's 500 years of life experience on a typical jury. People of all different backgrounds. And that's the strength of the jury. [¶] What I'm going to do and I think it's the only thing I can do to assist you is reread a little bit of page 42 of the instructions. [¶] It is your duty to talk with one another and to deliberate in the jury room. You should try to agree on a verdict if you can. Each of you must decide the case for yourself, but only after you have discussed the evidence with all the other jurors. [¶] Do not hesitate to change your mind if you become convinced that you are wrong. But, do not change your mind just because other jurors disagree with you. Keep an open mind and openly exchange your thoughts and ideas about this case. Stating your opinions too strongly at the beginning or immediately announcing how you plan to vote may interfere with an open discussion. [¶] Please treat each other courteously. Your role is to be an impartial judge of the facts, not to act as an advocate for one side or the other. [¶] If you need more guidance than that, I'm not sure I can give it to you, but I'll try. So, I will . . . ask you to go back and continue your deliberations. Thank you."

The jury continued its deliberations and later returned its verdict as described above. Defendant filed a motion seeking juror identifying information and a motion for a new trial on the ground the court failed to investigate alleged juror misconduct. Defendant's motion seeking juror identifying information was based on two declarations, that of defendant and that of his investigator. Defendant's declaration was devoid of facts, merely noting he believed juror misconduct occurred and needed further investigation. The investigator's declaration cited the juror's note early in the

deliberations and indicated he had been unable to track down the names of jurors or other information pertaining to the jurors.

The court rejected both motions. The court explained the juror question was received “early in the deliberations. And the court read them the general instruction that you’re an impartial judge of the facts, and that last instruction that every jury gets. I’m not seeing any evidence of misconduct. [¶] In terms of a fair trial, you were able to convince the jury for acquittals on a number of charges [T]hey found gang involvement not true on all of the charges, which saved you a lot of potential sentence. [¶] So I don’t see a sign of an unfair verdict. Also, the court has to be concerned with the jurors’ privacy.” “I’m not finding that you have shown good cause by that one juror who at one point someone felt wasn’t listening to the defense evidence. Obviously, the jury did listen to the defense evidence.”

DISCUSSION

Defendant first claims he was denied a fair trial by the court’s purported failure to investigate alleged misconduct by a juror. “A court on notice of the possibility of juror misconduct must undertake an inquiry sufficient “‘to determine if the juror should be discharged and whether the impartiality of other jurors had been affected.’”” (*People v. Espinoza* (1992) 3 Cal.4th 806, 822.) “The decision whether to investigate the possibility of juror bias, incompetence, or misconduct — like the ultimate decision to retain or discharge a juror — rests within the sound discretion of the trial court. [Citation.] The court does not abuse its discretion simply because it fails to investigate any and all new information obtained about a juror during trial. [¶] As our cases make clear, a hearing is required only where the court possesses information which, if proven to be true, would constitute ‘good cause’ to doubt a juror’s ability to perform his duties

and would justify his removal from the case.” (*People v. Ray* (1996) 13 Cal.4th 313, 343.)

Defendant also claims the court erred when it denied his motion for release of juror identifying information. Such information is sealed after the verdict pursuant to Code of Civil Procedure section 237, subdivision (a)(2). A criminal defendant may petition to obtain release of juror identifying information. (Code Civ. Proc., § 206, subd. (g).) “The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror’s personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information, but shall not set the matter for hearing if there is a showing on the record of facts that establish a compelling interest against disclosure.” (Code Civ. Proc., § 237, subd. (b).)

We review the trial court’s denial of a motion seeking juror identifying information for an abuse of discretion. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 991.) A request for disclosure of personal juror information requires a “timely” request “accompanied by a sufficient showing to support a reasonable belief jury misconduct occurred, diligent efforts were made to contact the jurors through other means, and . . . further investigation was necessary to provide the court with adequate information to rule on a motion for new trial.” (*People v. Wilson* (1996) 43 Cal.App.4th 839, 850; see also *People v. Rhodes* (1989) 212 Cal.App.3d 541, 551-554.) “A failure to make this required showing justifie[s] denying the request for disclosure.” (*Wilson*, at p. 850.) “The uncontrolled invasion of juror privacy following completion of service on a jury is, moreover, a substantial threat to the administration of justice.” (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1092.)

Defendant’s contentions on appeal are without merit. The court did not abuse its discretion in opting not to further investigate the tone and substance of the jury

deliberations, nor did the court abuse its discretion in withholding juror identifying information. The jury note was ambiguous and relatively innocuous: “One juror feels another will not give the defense fair consideration despite having been sworn to do so. [¶] Need answer ASAP.” Little good could have come from the court seeking to determine precisely what the allegedly offending juror did that suggested to another juror that he or she was not giving the defense fair consideration. Instead, the court reminded all of the jurors of their assigned roles in the administration of justice. The jury proceeded to deliberate for several days thereafter and returned a mixed verdict, without additional complaints made against the juror at issue (or any other juror). The court was also justified in finding defendant’s motion lacked good cause to impinge on the jurors’ privacy rights.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

SILLS, P. J.

RYLAARSDAM, J.